(5) Accordingly, this petition is allowed and the impugned order is quashed subject to the aforesaid observations. Parties through their counsel are directed to appear before the trial Court on 28th May, 1982.

N.K.S.

Before J. M. Tandon and S. S. Kang, JJ.

RAJ NARAIN and another,—*Petitioners*

versus

SHRI BHAJAN LAL and others,—*Respondents.*

Civil Writ Petition No. 2615 *of* 1982.

October 20, 1982.

Constitution of India 1950—*Articles* 164 *and* 226—*Representation of the People Act* (*XLIII of* 1951)—*Section* 73—*Chief Minister appointed by the Governor before the issue of a notification constituting the State Legislative Assembly—Such appointment—Whether violative of Article* 164 *of the Constitution and not valid—Appointment of a Chief Minister assailed on the ground of his not having requisite majority in the Assembly at the time of his appointment—Majority, however, established on the floor of the house—Writ of* quo-warranto—*Whether could be issued assuming the initial appointment to be technically not in order—Petitioner not having any special or personal interest in the appointment to a public office—Such a petitioner—Whether has a* locus standi *to move the court for a writ of* quo-warranto.

Held, that the Chief Minister and other ministers are appointed under clause (1) of Article 164 of the Constitution of India 1950. It is true that under clause (2) of this Article it has been provided that the Council of Minister shall be collectively responsible to the Legislative Assembly of the State. It can, however, be not inferred that the Chief Minister or other Ministers cannot be appointed by the Governor in the absence of the Legislative Assembly. It is not disputed that the Chief Minister and other Ministers can be retained in office even after the dissolution of the Legislative Assembly and if they can be retained in office without the Legislative Assembly, they can also be so appointed in the absence thereof. The appointment of a Chief Minister cannot be justifiably assailed on the ground that the Legislative Assembly was constituted after his appointment. (Para 5).

Held, that after the Legislative Assembly of the State having been constituted and the claim of a political party holding a clear majority in the Legislative Assembly and its leader capable of forming a stable Government in the State having been tested and proved beyond any doubt on the floor of the house, the leader of the majority party is entitled to be reappointed as Chief Minister and it would be futile to issue a writ of *quo-warranto* at this stage even if it be assumed that there was a technical defect in the appointment of a Chief Minister because the Legislative Assembly was constituted after his appoitment. (Para 8).

Held, that a proceeding in the nature of a *quo-warranto* is brought in the name and on behalf of the people and is not, primarily, in the interest of any individual, but to protect the public generally against the unlawful usurpation of offices and frenchises. A motion for a writ of *quo-warranto* can be made at the instance of a private individual without the intervention of the Government or any public authority. Even though a writ of *quo-warranto* is not a writ of right in the sense that the court is bound to grant the relief prayed for, still if the validity of an appointment or a claim to an office by a person is challenged by an applicant for a writ and the court is satisfied that the petition has been filed *bona fide*, i.e., without improper motives and without delay, it has a right to investigate the matter and decide on the validity of the appointment, notwithstanding that the petitioner is not a rival applicant to that office, and in that sense does not have a personal interest in the issue of a writ. (Para 13).

Civil Writ Petition under Article 226 of the Constitution of India praying that this Hon'ble Court may be pleased to issue a writ in the nature of quo warranto against the respondent No. 1 and the public office of the Chief Minister of Haryana may be declared vacant. Any other appropriate writs, orders, directions, as this Hon'ble Court may deem fit and proper in the circumstances of the case may also kindly be issued, the requirement of serving advance notices upon the respondents may kindly be exempted in view of the gravity and urgency of the matter.

Shujjat Ullah Khan with Roshan Lal Batra, S. N. Singhla, I. P. Attri, Advocates, *for petitioner No.* 1.

Sudershan Goel, Advocate, *for Petitioner No.* 2.

Harbhagwan Singh, A.G. with G. L. Batra, Senior D.A.G., Haryana and Arun Walia, Advocate, *for the State.*

JUDGMENT

(1) The General Election for electing the members of the Legislative Assembly in the State of Haryana was held in May, 1982.

The votes were polled on 19th May, 1982. On 22nd May, 1982, the results of the elections held in 86 constituencies as against the total of 90 constituencies were declared. The party position of 86 elected members was as under:—

(1) Congress-I	...	34
(2) Lok Dal	...	31
(3) B. J. P.	...	5
(4) Congress-J.	...	3
(5) Janata	...	1
(6) Independents	...	12

(2) On 22nd May, 1982, Mr. Devi Lal, Leader of the Lok Dal Party, met the Governor of the State and claimed to be in a position to form a stable Government. The Governor desired Mr. Devi Lal to present his supporters (Members of the Legislative Assembly) on 24th May, 1982, who were prepared to support him in the formation of the Government in the State. Mr. Bhajan Lal, Leader of the Congress-I Party met the Governor on 23rd May, 1982 and similarly claimed to be in a position to form a stable Government. The Governor having felt convinced about the claim of Mr. Bhajan Lal, invited him to form the Government. Mr. Bhajan Lal was, consequently, sworn in as Chief Minister, in the evening of 23rd May, 1982. Mr. Raj Narain (petitioner No. 1), who is the leader of the Democratic Socialist Party of India, and Mr. Subhash Bagri (petitioner No. 2), who was the Chairman of the Election Compaign Committee of that party in the State of Haryana, have filed the present writ petition assailing the appointment of Mr. Bhajan Lal as Chief Minister and have prayed for a writ in the nature of *Quo Warranto* against Mr. Bhajan Lal, respondent No. 1, and for a declaration that the public office of the Chief Minister of the State of Haryana is vacant.

(3) The learned counsel for the petitioners has contended that the new Legislative Assembly in the State of Haryana was constituted,—*vide* notification No. 308/HN-LA/82, dated 24th May, 1982, issued by the Election Commission of India under Section 73 of the

Representation of the People Act, 1951 (hereafter 'the Act'). Under Article 164 of the Constitution of India a Chief Minister could not be appointed in the absence of the Legislative Assembly. In view of the fact that the new Legislative Assembly was constituted on 24th May, 1982, Mr. Bhajan Lal, could not be appointed Chief Minister on 23rd May, 1982. His appointment as Chief Minister, is therefore, unconstitutional.

(4) The relevant part of Section 73 of the Act reads:—

"73. *Publication of results of general elections to the House of the People and the State Legislative Assemblies.*

Where a general election is held for the purpose of constituting a new House of the People or a new State Legislative Assembly, there shall be notified by the Election Commission in the Official Gazette, as soon as may be after the results of the elections in all the constituencies (other than those in which the poll could not be taken for any reason on the date originally fixed under clause (d) of section 30 or for which the time for completion of the election has been extended under the provisions of section 153), have been declared by the returning officer under the provisions of section 53 or, as the case may be, section 66, the names of the members elected for those constituencies and upon the issue of such notification that House or Assembly shall be deemed to be duly constituted:

Provided that the issue of such notification shall not be deemed—

(a) * * * * *

(b) to affect the duration of the House of the People or the State Legislative Assembly, if any, functioning immediately before the issue of the said notification,"

It is not disputed that the notification under Section 73 of the Act relating to the new Legislative Assembly was issued by the Election Commission of India on 24th May, 1982. The new Legislative Assembly in the State of Haryana shall, therefore, be deemed to have been constituted with effect from 24th May, 1982.

(5) The relevant part of Article 164 of the Constitution of India reads:

"164. *Other provisions as to Ministers.*—

(1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor.

* * * * *

(2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

(3) * * * *

(4) * * * *

(5) * * * * "

The contention of the learned counsel for the petitioners is that the Council of Ministers has been made collectively responsible to the Legislative Assembly of the State under clause (2) of Article 164 of the Constitution. In the absence of any Legislative Assembly the question of the Chief Minister or the Council of Ministers being collectively responsible to the Legislative Assembly of the State does not arise. The Constitution, therefore, does not envisage the appointment of a Chief Minister in the absence of the Legislative Assembly. We are not able to agree with this contention. "The Chief Minister and the other Ministers are appointed under clause (1) of Article 164 of the Constitution. It is true that under clause (2) of this Article it has been provided that the Council of Ministers shall be collectively responsible to the Legislative Assembly of the State. It can, however, be not inferred that the Chief Minister or other Ministers cannot be appointed by the Governor in the absence of the Legislative Assembly. It is not disputed that the Chief Minister and other Ministers can be retained in office even after the dissolution of the Legislative Assembly". The learned counsel for the petitioners has argued that the Chief Minister and the Ministers can be retained in their office after the dissolution of the Assembly

but they cannot be so appointed in the absence of the Legislative Assembly. The contention is without force. "We are of the opinion that if the Chief Minister and the Ministers can be retained in office without the Legislative Assembly, they can also be so appointed in the absence thereof". The appointment of Mr. Bhajan Lal as Chief Minister on 23rd May, 1982 cannot be justifiably assailed on the ground that the Legislative Assembly was constituted under Section 73 of the Act on 24th May, 1982.

(6) The learned Advocate General, appearing for the respondents, has contended that assuming (for the sake of argument only) that the appointment of Mr. Bhajan Lal as Chief Minister on 23rd May, 1982 was technically defective inasmuch as the Legislative Assembly was constituted on 24th May, 1982, it would still be futile to issue a writ of *quo warranto,* at this stage, for the reason that the claim of Mr. Bhajan Lal, being the leader of the majority party capable of forming a stable Government, has been repeatedly and effectively tested and proved at the floor of the Legislative Assembly. Reliance has been placed on *Hari Shankar Prasad Gupta* v. *Sukhdeo Prasad and another,* (1) (Full Bench), and *P. L. Lakhanpal* v. *Ajit Nath Ray, Chief Justice of India, New Delhi, and others,* (2) (Full Bench). In *Hari Shankar Prasad Gupta's case* (supra) the petitioner challenged the constitution of the Election Tribunal on the ground that one of the members was not qualified to act as such member on the date of his appointment but on the date of the hearing of the petition he had become so qualified and there was nothing to bar his reappointment. The High Court refused to entertain an application under Article 226 of the Constitution. It was held that the powers which the High Court enjoys under Article 226 of the Constitution are of discretionary nature, though that discretion has to be exercised in accordance with judicial principles. The Court will not grant a '*quo warranto*' in a case where a mere irregularity can be cured.

(7) It was again held in *P. L. Lakhanpal's case* (supra) that the scope of the power of the High Court to issue a writ of *quo warranto* under Article 226 of the Constitution is not wider than it is in England and Courts in this country have followed the

(1) A.I.R. 1954 All. 227.

(2) A.I.R. 1975 Delhi 66.

principles including the limitations which have been well established in England. It was further held that the issue of a writ of *quo warranto* by the High Court would be futile because as a result of the resignations of the Judges who were senior, Justice A. N. Ray (as his Lordship then was) became the senior-most puisne Judge and not only could be reappointed but would be entitled to be reappointed as Chief Justice of India, if the contention that the convention of seniority was a rule of law and was inherent in Article 124(2) be correct.

(8) The Legislative Assembly of Haryana was constituted on 24th May, 1982. The claim of the Congress-I Party holding clear majority in the Legislative Assembly, and its leader capable of forming a stable Government in the State, has been tested and proved beyond any doubt on the floor of the House. Mr. Bhajan Lal is the Leader of the majority party (Congress-I) in the Assembly and is entitled to be reappointed as Chief Minister. Applying the ratio of the two authorities mentioned above it would be futile to issue a writ of Quo Warranto at this stage even if it be assumed that there was a technical defect in the appointment of Mr. Bhajan Lal as Chief Minister on 23rd May, 1982, because the Legislative Assembly was constituted on 24th May, 1982 under Section 73 of the Act.

(9) The learned counsel for the petitioners has argued that in spite of the fact that the Congress-I was the single largest majority party (34) on 22nd/23rd May, 1982, it did not command clear majority in the House. There was an alliance between the Lok Dal (31) and the Bhartiya Janata Party (5). Mr. Devi Lal being the leader of the Lok Dal party became leader of the alliance. The Governor was therefore bound to invite Mr. Devi Lal to form the Government, in terms of the Governors' Committee Report which has the force of law under Article 160 of the Constitution. The contention is without merit. In the first place, the Governors' Committee Report, on which reliance has been placed, has not been placed on record. And secondly the Governors' Committee Report cannot be taken as a provision made by the President of India in terms of Article 160 of the Constitution. It may be added that Mr. Bhajan Lal has averred in the written statement that there was only seat adjustment arrangement arrived at for the purpose of election by the Lok Dal and the Bhartiya Janata Party and further there was no pact between

these two parties that they will function as a Single Group in the Assembly. It cannot, therefore, be held that under the circumstances the Governor was legally bound to invite Mr. Devi Lal to form the Government. The decision of the Governor on this point is essentially political and his discretion unfettered. Such decision of the Governor is interim in nature and not final inasmuch as it is liable to be ratified or negatived by the House under Article 164(2) of the Constitution.

(10) The learned counsel for the petitioners has further argued that the action of the Governor in appointing Mr. Bhajan Lal as Chief Minister on 23rd May, 1982 was for extraneous considerations and *mala fide*. The appointment of Mr. Bhajan Lal as Chief Minister is liable to be quashed on this ground. The Governor in his affidavit has denied the allegation of *mala fide* levelled against him by the petitioners in the writ petition. In view of the averment made by the Governor in his affidavit, the allegation of *mala fide* against him cannot be sustained. The challenge of the petitioners to the appointment of Mr. Bhajan Lal as Chief Minister on the ground of *mala fides* on the part of the Governor cannot be upheld.

(11) The learned counsel for the petitioners has contended that on 22nd May, 1982 the Governor desired Mr. Devi Lal to present his supporters on 24th May, 1982. The Governor was legally bound to wait for Mr. Devi Lal and his supporters till 24th May, 1982 and the action of the Governor in appointing Mr. Bhajan Lal as Chief Minister on 23rd May, 1982 is illegal. We are not impressed with this contention as well. It is true that on 22nd May, 1982 the Governor desired Mr. Devi Lal to present his supporters on 24th May, 1982. This, however, did not debar the Governor to appoint Mr. Bhajan Lal as Chief Minister on 23rd May, 1982 if the former felt convinced that the latter would be in a position to form a stable Government. Mr. Bhajan Lal met the Governor on 23rd May, 1982. It is understood that the Governor felt convinced about the genuineness of the claim of Mr. Bhajan Lal, with the result that the latter was appointed as Chief Minister. The appointment of Mr. Bhajan Lal as Chief Minister on 23rd May, 1982 cannot be held to be illegal.

(12) The learned Advocate General, appearing for the State of Haryana, has argued that the petitioners have no *locus standi*

to maintain the present writ petition inasmuch as they have no special interest involved in the appointment of Mr. Bhajan Lal as Chief Minister. Reliance has been placed on *S. P. Gupta and others* v. *President of India and others,* (3), wherein it has been held that there is a vital distinction between *locus standi* and justiciability and it is not every default on the part of the State or a public authority that is justiciable. The Court must take care to see that it does not overstep the limits of its judicial function and trespass into areas which are reserved to the Executive and the Legislature by the Constitution. It was further held that cases may arise where there is undoubtedly public injury by the act or ommission of the State or a public authority but such act or omission also causes a specific legal injury to an individual or to a specific class or group of individuals. In such cases a member of the public having sufficient interest can certainly maintain an action challenging the legality of such act or omission, but if the person or specific class or group of persons who are primarily injured as a result of such act or omission, do not wish to claim any relief and accept such act or omission willingly and without protest, the member of the public who complains of a secondary public injury cannot maintain the action, for the effect of entertaining the action at the instance of such member of the public would be to foist a relief on the person or specific class or group of persons primarily injured, which they do not want.

(13) The learned counsel for the petitioners has argued that the respondents cannot invoke the ratio of *S. P. Gupta's case* (supra) because no writ of Quo Warranto was involved therein, whereas such a writ has been prayed for in the instant case. We are of the opinion that the contention of the learned counsel for the petitioners must prevail. In *The King* v. *Speyer,* (4), it was held that an information in the nature of a *quo warranto will lie* at the instance of a private relator against a member of the Privy Council whose appointment is alleged to be invalid. In 'Extraordinary Legal Remedies' by Farris it has been stated in the chapter dealing with Quo Warranto that the proceeding is brought in the name and on behalf of the people and is not, primarily, in the interest of any individual, but to protect the public generally against the unlawful usurpation of offices and franchises. In *Maseh Ullah Shah* v. *Abdul Rehman Sufi and others,* (5), it was

(3) A.I.R. 1982 S.C. 149.
(4) (1916) 1 K.B. 595.
(5) A.I.R. 1953 All 193.

held that a motion for a writ of *Quo Warranto* can be made at the instance of a private individual without the intervention of the Government or any public authority. In *K. Sivaramakrishnan* v. *P. Arumugha Mudaliar, Inspector of Registration Madras-1 and another*, (6), it was held that though a writ of *quo warranto* is not a writ of right, in the sense that the Court is bound to grant the relief prayed for, still if the validity of an appointment or a claim to an office by a person is challenged by an applicant for a writ, and the Court is satisfied that the petition has been filed *bona fide*, i.e., without improper motives and without delay, it has a right to investigate the matter and decide on the validity of the appointment, notwithstanding that the petitioner is not a rival applicant to that office, and in that sense does not have a personal interest in the issue of a writ. In *The University of Mysore* v. *C. D. Govinda Rao and another*, (7), it was held that before a citizen can claim a writ of *quo warranto*, he must satisfy the court, *inter alia*, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not. Keeping in view the ratio of the authorities mentioned above it is difficult to hold that the petitioners cannot maintain the present writ of *Quo Warranto*, especially when there is nothing to doubt their *bona fides*. We, therefore, hold that the petitioners have a *locus standi* to maintain the present writ of *Quo Warranto*.

(14) Another point argued by the learned Advocate General is that the Governor appointed Mr. Bhajan Lal as Chief Minister under Article 164 of the Constitution. In view of the provisions contained in Article 361 of the Constitution, the action of the Governor in appointing Mr. Bhajan Lal as Chief Minister cannot be questioned in Court even on the ground of *mala fides*. We are not impressed with this contention as well. Article 361 of the Constitution reads:

> "361. *Protection of President and Governors and Rajpramukhs.*—
>
> (1) The President, or the Governors or Rajpramukh of a State, shall not be answerable to any court for the

(6) 1957 Madras 17.
(7) A.I.R. 1965 S.C. 491.

exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties.

* * * * * "

Clause (1) of Article 361, reproduced above, does give immunity to the Governor from being answerable to any Court in the exercise and performance of powers and duties of his office. This provision cannot be interpreted to mean that the action of the Governor cannot be assailed in Court on the ground of *mala fides* on his part.

(15) In view of the discussion above, we find no merit in the writ petition and the same is dismissed *in limine*.

N.K.S.

Before R. N. Mittal, J.

DAMAN ANAND,—*Appellant.*

versus

LIFE INSURANCE CORPORATION OF INDIA,—*Respondent.*

Regular First Appeal No. 179 *of* 1971.

October 20, 1982.

Life Insurance Corporation Act (XXXI of 1956)—Section 6—Life Insurance policy—Quarterly premium not paid on the due date—Policy providing for one month but not less than 30 days as period of grace—'Month'—Interpretation of.

Held, that the word 'month' as given in the relevant clause of the policy not being defined, its meaning as given in the dictionary is to be assigned to it to determine the grace period. According to the dictionary meaning it has to be understood as "any one of the twelve portions into which the conventional year is divided" under the British calendar and will, therefore, mean a space of time extending from any day to the corresponding day of the next calendar month. (Para 4).

Regular First Appeal from the decree of the Court of the Senior Sub-Judge, Jullundur, dated the 12th day of February, 1971, *dismissing the suit of the plaintiff with costs.*

H. L. Sibal, Senior Advocate with R. C. Setia, Advocate, *for the Appellant.*

D. V. Sehgal, Advocate with P. S. Rana & B. R. Mahajan, Advocates, *for the Respondent.*